

Jewish Human Rights

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Review of James Loeffler, *“Rooted Cosmopolitans: Jews and Human Rights in the Twentieth Century”* (Yale UP, 2018)

With whom have we not spent heart-warming hours there, looking out from the terrace over the beautiful and peaceful landscape, without suspecting that exactly opposite, on the mountain of Berchtesgaden, a man sat who would one day destroy it all?

(Stefan Zweig, “The World of Yesterday,” 1942)

On February 23, 1942, Stefan Zweig and his second wife Charlotte Elisabeth Altman committed suicide in Brazil. In his suicide letter, Zweig wrote:

I would not have asked to rebuild my life in any other place [other than Brazil] after the world of my own language sank and was lost to me and my spiritual homeland, Europe, destroyed itself ... I send greetings to all of my friends: May they live to see the dawn after this long night. I, who am most impatient, go before them.

What would happen to those who survived to see the dawn after the long night? James Loeffler’s *“Rooted Cosmopolitans: Jews and Human Rights in the Twentieth Century,”* an ambitious work of intellectual history, focuses on the way in which Jewish international lawyers envisioned this dawn. A common narrative would define those lawyers as divided between those who would cling to Zweig’s vision of the world of yesterday and its aspirations for an international world order, and those who would turn inward, to territory, to the nation and the establishment of a state—a secure home for the Jewish people. Loeffler’s fascinating book attempts to destabilize this accepted binary. His heroes do not conceive of their cosmopolitan vision as simply lost or replaced by the

particularism of the nation-state. Rather, their vision and practices combine both aspects—they are, at once, both Zionist and cosmopolitan: “rooted cosmopolitans.”

Histories of international law have flourished over the past two decades, and gained considerable momentum with the publication of Martti Koskenniemi’s book, *“The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960”* (2001). “The Gentle Civilizer” framed the history of international law as the history of ideas developed and practiced by international lawyers. In *Rooted Cosmopolitans*, Loeffler joins this body of literature, offering a history of *Jewish* international lawyers. Loeffler’s book is also relevant to another vibrant scholarly conversation on the history and theory of international human rights. Samuel Moyn’s groundbreaking work on the history of human rights challenged the notion of 1945 as a watershed moment in the history of international human rights law, and dedicated greater attention to social activists and their networks. Similarly, Loeffler’s periodization does not follow the traditional claims on 1945, or the revisionist arguments on the importance of the 1970s. Tracing the footsteps of his Jewish protagonists, his narrative begins

with the interwar period and the League of Nations minority regime. The figures he studies include the most celebrated international lawyers of the twentieth century, such as Hersch Lauterpacht, alongside the less familiar advocates Jacob Robinson or Peter Benenson, the founder of Amnesty International. The paths of most of these men (women are quite marginal in this narrative) would cross at different points set out by the book; some would join forces and collaborate with each other, while others would engage in fierce debates and ultimately take different directions.

Why is the Jewish identity of different lawyers relevant to the study of their ideas and contributions to international law? What does writing a *Jewish* history of international law mean in the broader context of the history of international law or the history of human rights? Loeffler's Jewish international lawyers, like those in other studies that follow a similar vein, challenge a common feature of international legal history, which tends to focus on *national* legal traditions of international law—German, French, British, American—or histories of international lawyers from the Global South. But Loeffler's Jewish history of international law doesn't simply defy national affiliations. Nationalist sensibilities and cosmopolitan values are woven together in a history that introduces the emergence of human rights and Zionist ideologies as complementary components in the international postwar vision.

Loeffler's book is divided into three chronologically consecutive parts (Emergence, Convergence and Divergence), their titles alluding to the interplay between Zionist and cosmopolitan sensibilities. The tension between sovereignty and cosmopolitanism, apology and utopia, has long characterized the push-pull between two ends of the spectrum that constitutes international law. One of the most striking contributions of Loeffler's book lies in his attempt to blur the line between these familiar categories

and unsettle established biographical perceptions on cosmopolitan vs. purely Zionist figures.

Loeffler dedicates the first part of the book, "Emergence," to the interwar years and the involvement of Jewish international lawyers in the minority regime at the League and in the Zionist movement. Hersch Lauterpacht, the ultimate cosmopolitan figure in the history and theory of international law, is portrayed here as an important visionary of the Zionist human rights tradition. The quest of Jacob Robinson, another prominent international lawyer, to search for new solutions after the anti-Jewish violence of the 1905 Russian Revolution, leads him to endorse Simon Dubnow's idea of Nationhood without territory and become a central advocate for minority rights. "Minority rights in the deepest sense of the term," he declared in one speech, "means the rights of spiritual belonging to all other parts of the nation across the whole world" (41).

The collapse of the minority regime paves the way to the second part of the book: "Convergence." According to Loeffler, the promotion of human rights after the Second World War was "the brainchild of American policymakers and intellectuals, who replaced the delegitimized European model of minority rights with a new idea of American-style civil liberties" (91). As Mark Mazower claimed, "beyond the smokescreen of the rise of human rights we see the need to bury the body of the minority regime as deep as possible." But Loeffler adds to Mazower's observation by emphasizing the role of Jewish jurists in the postwar rise of human rights. Take the Nuremberg Trials as an example. Behind the scenes of this great legal drama, we find Jacob Robinson and Hersch Lauterpacht engaged in almost every aspect: from the very definition of a new category—crimes against humanity—to the gathering of evidence, preparation of briefs and the choice of defendants.

Indeed, Loeffler's book highlights an unnoticed aspect of the Nuremberg Trials. Histories of the Nuremberg trial have often conceived it as an international trial conducted in the name of humanity as a whole. Its critics accused it of being a "victor's justice" trial. Thus, it is not surprising that the Nuremberg architects, most prominently Robert Jackson, were keen to avoid yet another legitimacy concern: the accusation that Nuremberg constituted a case of "victims' justice"—the prominent critique against the Eichmann trial. Were these two projects so far apart?

The famous Nuremberg statement—that international law must not be applied "upon impersonal [state] entities, but upon human beings"—came directly from Lauterpacht's pen. Hersch Lauterpacht also drafted the opening and closing statements for the British prosecutor Hartley Shawcross: "The voice is the voice of Jacob, but the hands are the hands of Esau" (Gen. 27: 22). Does the involvement of Robinson and Lauterpacht bring Hausner of Jerusalem closer to Jackson of Nuremberg? Loeffler's juxtaposition of the telling of the history of the involvement of Jewish jurists in both the Nuremberg (international) trial and Eichmann (national) trial could problematize the assumed distinctions between them. However, such juxtaposition may risk confusing between mere involvement and significant influence. Did their presence and work for the Nuremberg trial enable them to shape the deep logic and design of the Nuremberg trials? At least for Jacob Robinson the answer is probably not. His perspective would only gain its pivotal role later, at the Eichmann trial, in which victims' testimonies received primary attention and the Holocaust occupied the heart of the trial.

Both Lauterpacht and Robinson move between the sovereigntist arena, promoting the establishment of the State of Israel in its early days, and assisting various projects at the UN—the ultimate international arena. "[T]he same dramatis

personae populated both stories," notes Loeffler. "Throughout 1947 and 1948 Robinson shuttled between roles as Israel's top lawyer at the UN and the first legal advisor to the nascent UN Commission on Human Rights. Lauterpacht wrote influential drafts of both the International Bill of Rights and Israel's Declaration of Independence, while secretly advising the newborn State of Israel on legal strategy in its conflict with the Arab world" (144).

Both Lauterpacht and Robinson came to realize that their vision for a robust human rights regime was not about to materialize at the UN level, as Loeffler's book observes: "It is clear to me, Lauterpacht would later argue, 'that the Declaration does not carry things further and that in some important respects has put the clock back. We shall have to make a new start.'" In a series of lectures in Jerusalem, Lauterpacht explained: "There is no prospect for the fulfillment of the purpose of the Charter in the matter of human rights and freedoms unless an effective right of petition is accepted as being of the essence of the system." Similarly, Robinson considered the Commission on Human Rights a "waste of time" and focused his efforts on the Genocide Convention, the International Refugee Convention and the International Criminal Court. It took him years to secure an Israeli commitment to the Refugee Convention. The International Criminal Court initiative would reach a dead end.

Various protagonists in Loeffler's story wished for an Israeli leadership position at the UN Human Rights Commission, to no avail. The starting point of the Non-Aligned movement in Bandung marked the starting point of a prolonged exclusion of Israel from Third World initiatives. Then came Suez and its diplomatic casualty: the ideal of Jewish neutrality. As noted by Loeffler, "Lauterpacht's hopes for bold Israeli leadership on the UN human rights front also died in the sands of Sinai."

In this third and final part of the book, "Divergence," we also find the origins of the

familiar tension between Zionism and human rights. In the aftermath of the Eichmann trial, the Israel of the 1960s emerges as “the ultimate parochial entity, incompatible with the Universalist imperatives of human rights and global justice” (260). Over the course of the following decade, human rights would become a transnational movement. Jewish activism would no longer focus its advocacy efforts in the international arena. The 1967 war would position Israel and the Zionist movement at the far end of the sovereigntist extreme. At a deeper level, Loeffler points to a shift in the quality of the link between particularism and universalism during this period. While human rights replace the minority regime as the cosmopolitan vision of the postwar period, they restore the objective of the previous regime in constraining majorities from abusing their power against disempowered groups. That objective is lost once human rights become “a vehicle for sovereigntist claims of anticolonial movements” (271). Amid the loss of their human rights agenda and the loss of the UN as their arena, Jewish advocates turned to the American administration and redefined the Jewish cause in relation to Israel. The term “prisoners of Zion” vividly captures this shift. Israel, notes Loeffler, became “the source of heightened Jewish vulnerability and the best solution to it (294).

Were Jewish international lawyers agents of a specific kind of humanism? Is there something special about the Jewishness of various advocates of human rights that renders their ethnic, religious or national identity particularly relevant or irrelevant to their special involvement in international law? And, if so, what aspect of their Jewishness should we deem responsible for, or deeply related to, their life-long human rights project? Is it their Jewish ‘fate’? Culture? Legal tradition?

Loeffler’s answer is clear. The personal biographies of his heroes are the explanation and the source of inspiration

for their international legal ideas and life projects. Their persecution as members of a minority group enabled them to appreciate, perhaps sooner or better than others, the need for a minority protection regime. Only those who were there could feel the urgency of establishing an international human rights regime. Those left with no political identity or recognized status, their language dwindling, their homeland lost, were the best advocates for the principle of *non-refoulement*. Their life experiences assigned them the special responsibility of crafting an international magna carta: “The Jewish destiny relied on and affirmed the new spirit of international law” (22).

One can debate the extent to which Jewish advocates were indeed pivotal to the postwar international human rights projects of the Refugee Convention, the ICCPR and conventions such as CERD. There is no single Jewish approach to these projects, and the history of the involvement of different figures that Loeffler traces is often the history of those who ran against the grain of their group in a somewhat solitary crusade to salvage cosmopolitan ideals. Indeed, Loeffler’s story highlights the forgotten commitment of Jewish lawyers to various human rights projects. However, the festive tone of the book could blur the important distinction between failed attempts to shape human rights and concrete influence on their content. This is largely a history of the failures of Jewish international lawyers to influence the content and practice of human rights rather than a history of their lasting contribution.

Another distinction the book often avoids is the distinction between the personal biography of a thinker and her or his body of work. Understanding Lauterpacht *the thinker* through the prism of Lauterpacht *the Jew* may illuminate some important aspects of his life’s work in a new and unconventional light. However, such a reading may also distort or narrow the scope of our understanding. Some of us will not reduce our understanding of a literary

text to a reflection of the concrete psychological state of its author. Similarly, a text of or about the law is more than a reflection of its author's biography. The prism of the Jewish context is not merely the history of persecution and survival. Jewish identity is comprised of cultural heritage, moral and legal traditions and alternative visions for a legal order within or beyond the nation state.

Moreover, even if we replace or complement the particularism of the Jewish fate with the spiritual dimensions of Jewish existence, we sustain the very sense of particularism that some of these jurists sought to defy. Loeffler addresses this concern in the last pages of the book:

The phrase '[t]o be human as a Jew' reads like an oxymoron today. It smacks of special pleading or relativism. Human rights are supposed to transcend difference, not affirm it. Yet this is not the only way to define human rights ... To survive as a minority required political self-definition, which in turn meant collective politics (296).

I am quite skeptical of the view that this is the only option for conceiving the complex relationship between Jewish identity and cosmopolitan values. The Second World War and the interwar period that preceded it did not only shatter the dream of the League of Nations and the possibility of a feasible minority regime. For intellectuals like Zweig, who conceived of themselves in humanist terms, the plight of the war was not only or primarily physical: It was the plight of losing their identity as cosmopolitans. This was an experience of loss precisely because their Jewishness was thrust upon them against—and despite—their choices. Zweig was no longer the Austrian author, the man of letters, the visionary of a post-nationalist Europe. He was a Jew.

Reading Lauterpacht's life-long work as a whole, through the prism of his Jewish identity, risks conceiving his ideas as an instrumental device for the survival of his people or himself. This seems too narrow

an understanding of who he was and how his international legal work should be remembered. Perhaps a different reading would concede that these men and women, living through the days of yesterday, losing their entire world and mother tongue, were faced with an impossible choice between clinging to the cosmopolitan dream, regardless or adopting Zionism. Personally, they may have been torn, even motivated by their individual tragedies. Conceptually, however, understanding their cosmopolitan vision as a concrete Jewish tradition is a contradiction in terms.

In the concluding remarks of his suicide letter, Zweig notes that he would "prefer to end [his] life at the right time, upright, as a man for whom cultural work has always been his purest happiness and personal freedom – the most precious of possessions on this earth." During 1933, Zweig contacted the National Library in Jerusalem and expressed his interest in entrusting artifacts from his personal archive to the institution. These are now part of the Stefan Zweig Archive, preserved at the Library. Zweig's choice to end his physical life merely affirmed the death of who he was. Perhaps sending his papers to Jerusalem conveyed a sense of despair, an action of last resort, a recognition that there might be no other safe haven for his life's work. Jerusalem was, perhaps, the only place that could save his cosmopolitan art from oblivion. In his lost Vienna, he could only be read as a Jew.

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